BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WIRELINE COMPETITION BUREAU

In the Matter of	)	
	)	
Accelerating Wireline Broadband	)	
Deployment by Removing Barriers to	)	WC Docket No. 17-84
Infrastructure Investment	)	
	)	

INITIAL COMMENTS OF THE ELECTRIC UTILITIES ON OVERLASHING

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Duke Energy Corporation
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Oncor Electric Delivery Company LLC
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EXECUTIVE SUMMARY

The Commission has long held that overlashing is subject to the same safety, reliability and engineering standards as any other burden on the pole. Certain attaching entities nonetheless routinely insist (1) that electric utilities cannot require advance notice of overlashing, and (2) that overlashing is somehow exempt from safety, reliability or engineering review. Both of these propositions are wrong on the law, wrong on the policy, and wrong on the structural science. To be clear, all of the Electric Utilities allow overlashing. The issue, here, is not whether overlashing is allowed. The issue is whether and to what extent pole owners have the opportunity to engineer modifications to their pole lines. The Electric Utilities welcome the Commission's attention to this important issue.

The Commission asks whether it should codify "a rule that overlashing is subject to a notice-and-attach process." The answer to this question is "yes." But the Commission should not stop there. Though the mere organization of the words in the phrase "notice-and-attach" would indicate that "notice" precedes "attachment," the Commission should make it abundantly clear that a utility may require reasonable **advance** notice of overlashing. The Commission should further clarify that advance notice consistent with Section 1.1403(b) of the Commission's existing pole attachment rules (i.e. 45 days) is presumptively reasonable.

Though the Commission has never squarely addressed whether and to what extent advance notice of overlashing is required, numerous state public utility commissions have done so. Every state public utility commission to address this issue within the past 10 years has either required overlashing to follow the same permitting process as any other attachment or, at a minimum, adopted some form of reasonable advance notice requirement. None of these state public utility commissions have in any way embraced the absurd propositions advocated by some attaching entities.

Without advance notice of overlashing, electric utilities cannot evaluate the impact of the proposed overlashing (loading/clearance) or determine whether there are existing violations (loading/clearance) that must be corrected prior to overlashing. Attaching entities argue that the loading impact is minimal and that clearance violations can be corrected after-the-fact. Even assuming the loading impact of a single overlashed fiber is minimal, this argument does not negate at least three important facts: (1) the pole may already be overloaded; (2) this may not be the first overlash; and (3) as attaching entities will themselves acknowledge, even a single fiber overlash can, in fact, overload a pole. Though certain types of clearance violations are indeed suitable for "back end" correction, other types of clearance violations (such as insufficient clearance to electric conductors and insufficient minimum ground clearance) are not. Overlashing into a violation not only exacerbates the violation but also exposes the electric distribution system, the communications worker and the public to risk.

In addition to the sound engineering reasons to support an advance notice protocol for overlashing, there are competitive reasons to support an advance notice protocol. If overlashing, for some reason, is treated differently than any other burden on the pole (like a new attachment), this policy would give an incredible advantage to incumbents over their competitors. The

competitor, unlike the incumbent, will be required to construct a new messenger strand in order to deploy its broadband network.

Even if the Commission decides to favor incumbents in the deployment of high-speed broadband, it should still allow an electric utility to require reasonable advance notice of overlashing so that it has the opportunity to properly engineer the modification to the pole line. Overlashing processes are not an impediment to broadband deployment—they are a means of preserving the structural integrity of the infrastructure upon which broadband deployment depends, and a means of ensuring the safety of line workers and the public. As the Commission has correctly noted, "electric power companies…are typically disinterested parties with only the best interest of the infrastructure at heart."[1]

For too long, certain attaching entities (some of which already have outed themselves in this proceeding) have insisted upon unreasonable—and downright dangerous—positions regarding overlashing processes. The Commission can and should take this opportunity to make it abundantly clear that pole owners may require reasonable advance notice of overlashing. The Electric Utilities look forward to engaging further with the Commission on this important issue.

[1] In the Matter of Implementation of Section 224 of the Act, A National Broadband Plan for Our Future, WC Docket No. 07-245, Order and Further Notice of Proposed Rulemaking, ¶ 68 (May 20, 2010).

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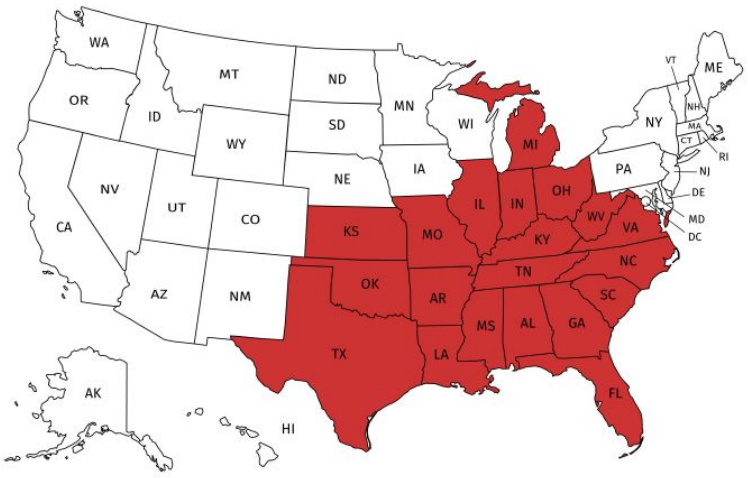
Ameren Services Company, American Electric Power Service Corporation, Duke Energy Corporation, Entergy Corporation, Oncor Electric Delivery Company LLC, Southern Company, Tampa Electric Company and Westar Energy, Inc. (the "Electric Utilities") respectfully submit the following comments in response to the Commission's Further Notice of Proposed Rulemaking regarding overlashing in the above-referenced docket.[2] For the reasons set forth below, the Commission should clarify that pole owners may require advanced notice of overlashing in order to ensure that the overlashing complies with applicable standards for safety, reliability, and engineering.

INTRODUCTION

The Electric Utilities, either directly or through their operating company subsidiaries and affiliates, provide electric service to customers in 20 states and numerous metropolitan areas. The Electric Utilities collectively own and maintain more than 21 million distribution poles, many of

[2] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment* WC Docket No. 17-84, Further Notice of Proposed Rule Making, 82 Fed. Reg. 248, 61522 (December 28, 2017) (the "FNPRM"). All references to the FNPRM herein are to the version of the FNPRM published in the Federal Register on December 28, 2017, as opposed to the version adopted on November 16, 2017 and released on November 29, 2017.

which host third-party attachments. The Electric Utilities operate in 20 different states across the Southeast and Midwest.



Fourteen of these states are among the 30 states in which pole attachments are currently regulated by the Commission. See States that Have Certified that They Regulate Pole Attachments, WC Docket No. 10-101 (May 19, 2010).

Ameren Service Company ("Ameren Service Co.") is a wholly-owned subsidiary of Ameren Corporation ("Ameren"). Ameren Services Co. provides administrative and technical services to Ameren and its subsidiaries, including its operating company subsidiaries—Ameren Illinois Company d/b/a Ameren Illinois and Union Electric Company d/b/a Ameren Missouri. Ameren Illinois and Ameren Missouri own electric distribution infrastructure, including a substantial number of utility poles, in Illinois and Missouri. Ameren's operating companies provide electric power service to more than 2.3 million customers throughout a 64,000 square mile service territory in Missouri and Illinois.

American Electric Power Service Corporation ("AEP Service Corp.") is a wholly-owned subsidiary of American Electric Power Company, Inc. ("AEP"). AEP Service Corp. supplies administrative and technical support services to AEP and its subsidiaries. AEP is one of the largest

investor-owned electric utilities in the United States with more than 5 million customers linked to its electricity transmission and distribution grid covering 197,500 square miles. AEP, through its operating company subsidiaries, owns and operates electric distribution infrastructure in eleven states across the Midwest and Southeast: Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia, and West Virginia.

Duke Energy Corporation ("Duke") is an electric power holding company. Through its operating company subsidiaries—Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, Duke Energy Florida, LLC, Duke Energy Kentucky, Inc., Duke Energy Indiana, LLC and Duke Energy Ohio, Inc.—Duke owns electric distribution infrastructure, including a substantial number of utility poles, in Florida, Indiana, Kentucky, North Carolina, Ohio, and South Carolina.

Entergy Corporation ("Entergy") is an electric utility holding company. Through its operating company subsidiaries—Entergy Arkansas, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Texas, Inc.—Entergy owns electric distribution infrastructure, including a substantial number of utility poles, in Arkansas, Louisiana, Mississippi and Texas.

Oncor Electric Delivery Company LLC ("Oncor") is an electric utility serving more than 400 cities and 91 counties in Texas, nearly one-third of the state's geographic area and in the country's highest-growth region in electric demand, according to the North American Electric Reliability Council. Oncor's current service area includes the Dallas-Fort Worth metro area, as well as Midland/Odessa, North Austin, Round Rock, Killeen, Waco, Wichita Falls and Tyler. Oncor owns a substantial number of electric distribution poles and operates the largest distribution and transmission system in Texas, providing power to approximately 10 million end use customers

and more than 3.3 million electric delivery points over more than 121,000 miles of distribution and transmission lines.

Southern Company ("Southern") is one of the largest generators of electricity in the nation, serving both regulated and competitive markets across the southeastern United States. Southern, through four retail operating companies—Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company—supplies energy to approximately 4.2 million customers in a 120,000 square-mile service territory spanning most of Georgia and Alabama, southeastern Mississippi, and the panhandle region of Florida.

Tampa Electric Company ("Tampa Electric"), headquartered in Tampa, Florida, has supplied the Tampa Bay area with electricity since 1899. Tampa Electric's service area covers 2,000 square miles, including all of Hillsborough County and parts of Polk, Pasco and Pinellas Counties. Tampa Electric serves nearly 670,000 residential, commercial and industrial customers. Tampa Electric owns approximately 307,000 electric distribution poles.

Westar Energy, Inc. ("Westar"), headquartered in Topeka, Kansas, is an electric utility operating company that also wholly owns Kansas Gas & Electric Company ("KG&E"). Together, Westar and KG&E serve approximately 617,000 residential and 91,000 commercial/industrial customers throughout a service territory covering more 10,000 square miles in Kansas. Westar and KG&E collectively own approximately 545,000 distribution poles in central and eastern Kansas.

COMMENTS

Advance notice of overlashing is the only way an electric utility can exercise its 47 U.S.C. § 224(f)(2) rights, and the only way an electric utility can determine: (1) whether the additional load imposed by the overlashing meets the electric utility's engineering standards; and (2) whether

there is an existing violation of the electric utility's standards or applicable codes that must be remedied prior to the proposed overlashing.

I. UNDER THE COMMISSION'S EXISTING PRECEDENT, ELECTRIC UTILITIES CAN REQUIRE ADVANCE NOTICE OF OVERLASHING AND DENY OVERLASHING PROPOSALS BASED ON THE REASONS SET FORTH IN 47 U.S.C. § 224(f)(2).

A. The Commission Has Never Prohibited Electric Utilities from Requiring Advance Notice of Overlashing and a Reasonable Opportunity to Engineer the New Load.

Overlashing is subject to the same safety, reliability and engineering standards as any other burden on a pole line (including but not limited to new attachments), under the Pole Attachments Act and judicial and Commission precedent. *See* 47 U.S.C. § 224(f)(2) ("a utility providing electric service may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes."); *S. Co. Services, Inc. v. FCC,* 313 F.3d 574, 582 (D.C. Cir. 2002) ("And a utility can also deny access to overlashers for reasons of insufficient capacity, safety or reliability as described in the Act") (citing 47 U.S.C. § 224(f)(2) and *In the Matter of Amendment of the Commission's Rules and Policies Governing Pole Attachments; In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996,* Consolidated Partial Order on Reconsideration, 16 FCC Rcd. 12103, ¶ 74 (May 25, 2001)("Reconsideration Order")); *see also In the Matter of Kansas City Cable Partners d/b/a Time Warner Cable of Kansas City v. Kansas City Power & Light Co.*, 14 FCC Rcd. 11599, ¶ 26 (July 15, 1999) (prohibiting cable company from proceeding with overlashing where make-ready was required to accommodate proposed overlashing).

In its first statement of the subject of overlashing, in 1995 (prior to the 1996 Amendments to the Pole Attachments Act), the Commission actually **presumed** that cable operators would be

required to submit requests to overlash, and that pole owners would have the right to deny access based on "legitimate safety issues." In fact, the only issue addressed by the Commission was whether pole owners were required to allow overlashing at all. The Commission stated:

> Recently, allegations have been made that utility pole owners may be unreasonably preventing cable operators from "overlashing" fiber to their existing lines **by failing to process a request to overlash fiber within a reasonable time period and/or unreasonably denying the request**. While legitimate safety issues may justify certain precautions relating to fiber upgrades, we are concerned that there could be serious anticompetitive effects from preventing cable operators from adding fiber to their systems.

Common Carrier Bureau Cautions Owners of Utility Poles, Public Notice, 1995 FCC LEXIS 193, *1-2 (Jan. 11, 1995) (emphasis added).

The 1996 Amendments to the Pole Attachments Act included an express right for electric utilities to deny access for reasons of insufficient capacity, safety, reliability and generally applicable engineering concerns. 47 U.S.C. § 224(f)(2). In the initial rulemakings implementing the 1996 Amendments, the Commission confirmed that § 224(f)(2) is applicable to overlashing:

> To the extent that the overlashing does create an additional burden on the pole, any concerns should be satisfied by compliance with generally accepted engineering practices. . . . Overlashing has been in practice for many years. **We believe utility pole owners' concerns [regarding overlashing] are addressed by Section 224's assurance** that pole owners receive a just and reasonable rate and **that pole attachments may be denied for reasons of safety, reliability, and generally applicable engineering purposes**.

In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996; Amendment of the Commission's Rules and Policies Governing Pole Attachments, CS Docket No. 97-151, Report and Order, 13 FCC Rcd 6777, ¶ 64 (Feb. 6, 1998) (the "Telecom Order") (emphasis added). In other words, overlashing is subject to the exact same safety, reliability and engineering scrutiny as any other "burden on the pole."

In 2001, on reconsideration of the Telecom Order, the Commission addressed the specific issue of third-party overlashing, stating:

> US West asserts that notice to the pole owner of a third party overlasher is necessary for the pole owner to determine whether the overlashing will endanger the integrity of a pole line or create a hazardous condition, as well as to calculate *Telecom Formula* rates after February 8, 2001 if the overlasher is a telecommunications service provider. **We agree that the utility pole owner has a right to know the character of, and the parties responsible for, attachments on its poles, including third party overlashers**. . . . **We clarify that it would be reasonable for a pole attachment agreement to require notice of third party overlashing.**

Reconsideration Order at ¶ 82 (bolded and underlined emphasis added), *aff'd S. Co. Services*, 313 F.3d at 582 ("[T]he FCC rules do not preclude pole owners from negotiating with pole users to require notice before overlashing."). In that same order, in the context of discussing the space occupied by a third party overlashing for purposes of calculating the telecom rate, the Commission stated:

> We clarify that third party overlashing is subject to the same safety, reliability, and engineering constraints that apply to overlashing the host pole attachment. We affirm our policy that neither the host attaching entity nor the third party overlasher must obtain additional approval from or consent of the utility for overlashing other than the approval obtained for the host attachment.

Reconsideration Order at ¶ 75.

From these two consecutive sentences in the Reconsideration Order, two principles are clear: (1) third party overlashing is subject to the same safety and engineering constraints that apply to the host attachment (insofar as the overlashing—whether made by the owner of the existing attachment or a third-party—becomes a part of the existing attachment); and (2) no additional consent or approval from the pole owner is required on account of the fact that the overlashing is by a third party. Despite contentions by attaching entities to the contrary, this does not mean that overlashing is exempt from advance notice (or "approval" or "consent" for that matter). This only means that the notice and engineering obligations "run" with the existing

attachment. In other words, the fact that the overlashing is by a third party does not carry with it any special advance notice/approval obligations; but neither does the fact that it is a third party overlashing obviate it from the "the same safety, reliability, and engineering constraints that apply to overlashing the host pole attachment." Reconsideration Order at ¶ 75. This is the only way to reconcile the allegedly competing statements within the Reconsideration Order. Unfortunately, for many years, certain attaching entities (primarily large cable companies) have refused to fairly interpret the Commission's precedent, instead relying upon their favorite, out-of-context soundbites from the Commission's precedent. In doing so, they have cast overlashing processes into a quagmire during certain pole license agreement negotiations.

These offending attaching entities ascribe to overlashing some mystical, talismanic quality that somehow exempts it from the laws of physics and applied structural science. To say that this position is frustrating to the Electric Utilities is an incredible understatement. Even now, many of the Electric Utilities are currently involved in pole license agreement negotiations in which certain attaching entities dogmatically insist upon this illogical, dangerous and unlawful position. Some of those cable operators are advocating the same positions in this proceeding. *See, e.g.*, NCTA Ex Parte Letter re Wireline Infrastructure, WC Docket No. 17-84, p. 2 (October 20, 2017) ("NCTA expressed support for codifying the overlashing policy in the Commission's rules. For example, such a rule could state that **an attacher shall not be required to**…**provide advance notice to a pole owner before overlashing** additional wires, cables, or equipment to its own facilities. The attacher shall inform the pole owner of the location and type of any facilities that have been overlashed.") (emphasis added).[3] These positions are not just flawed as a matter of

[3] *See also* Comments of NCTA – The Internet and Television Association, WC Docket No. 17-84, p. 5-6 (June 15, 2017) ("Many other utilities also demand unnecessary and costly pole-by-pole load analysis for fiber overlashing (tantamount to a permitting requirement) and other common installations that have been safely installed for years without incident. . . . These costly and

structural science; they are also wrong on the law. The only way a utility can exercise its Section 224(f)(2) rights with respect to overlashing is (a) if the utility knows about the overlashing in advance, and (b) has a reasonable opportunity to engineer the new load.

B. The Commission's Complaint Proceeding Decisions in *Salsgiver* and *CTAG* Do Not Prohibit Electric Utilities from Requiring Advance Notice of Overlashing.

Attaching entities often rely on the cases of *Salsgiver Communications, Inc. v. North Pitt. Tel. Co.*, 22 FCC Rcd 20536, ¶ 23 (2007) and *Cable Television Ass'n of Ga. v. Ga. Power Co.*, 18 FCC Rcd 16333, ¶ 13 (2003) when objecting to advance notice of overlashing. *See, e.g.* In the Matter of a National Broadband Plan for Our Future, GN Docket No 09-51, Comments of Charter Communications, Inc., n. 9 (Sept. 24, 2009). However, both *Salsgiver* and *CTAG* are consistent with the Commission's rule-making precedent that while advance consent is not required, it is reasonable for a pole owner to require advance notice of a proposed overlashing so that it can ensure that the proposed overlashing meets its standards for capacity, safety, reliability, and engineering.

In *Cable Television Ass'n. of Ga. v. Ga. Power Co.*, 18 FCC Rcd 16333, ¶ 13 (2003), the Commission considered a complaint by the Cable Television Association of Georgia ("CTAG") alleging that Georgia Power imposed unjust and unreasonable conditions of attachment in the

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unnecessary approaches to common configurations are placing a needless drag on broadband deployment. Because cable operators, like the utilities, have installed facilities on the pole, they have the same interest in maintaining safe and reliable outside plant, networks and support structures as the utilities."); Comments of Charter Communications, Inc., WC Docket No. 17-84, p. 36, n. 91 (June 15, 2017) (objecting to the policy by some electric utilities requiring "full loading studies for every pole in an application, no matter how trivial the size or weight of the new attachment or stout the pole, including for the efficient and safe practice of "overlashing" (which the Commission does not consider a permitting event), or a requirement that a professional engineer stamp every single pole drawing submitted to a utility company.").

parties' negotiated pole license agreement. In the context of that particular agreement, the Commission found that:

> The New Contract provision challenged by the Cable Operators requires Georgia Power's written consent to any overlashing, which the utility may take up to 30 days to grant or deny. This new provision is unjust and unreasonable on its face. The Commission has expressly articulated a policy promoting overlashing, and stated that "neither the host attaching entity nor the third party overlasher must obtain additional approval from or consent of the utility for overlashing other than the approval obtained for the host attachment." Georgia Power is therefore ordered to negotiate in good faith a reasonable provision consistent with Commission precedent.

Id. The entirety of the Commission's decision regarding the validity of the overlashing provision at issue in the *CTAG* case is only six sentences long. It does not address—let alone attempt to reconcile—the fact that pole owners have the right to deny overlashing under § 224(f)(2). Instead, it merely cites back to the Reconsideration Order, and its statement that additional consent or approval is not required for *third party overlashing*. As explained above, the Reconsideration Order cannot be interpreted as exempting overlashing from an advance notice requirement or Section 224(f)(2) review (which, incidentally, go hand-in-hand).

In *In the Matter of Salsgiver Communications, Inc. v. North Pitt. Tel. Co.*, 22 FCC Rcd 20536, ¶ 23 (2007), the Commission considered a complaint by Salsgiver Communications, Inc. against North Pittsburgh Telephone Company ("NPTC") regarding a pole license agreement. There, the Commission—citing the Reconsideration Order—found "to be unreasonable on its face" a requirement in the pole license agreement that "prohibits Salsgiver from allowing any third party to overlash Salsgiver's attachments without obtaining a license to overlash from NPTC." (*Id.*) ("The Commission has made clear that 'neither the host attaching entity nor the third party overlasher must obtain additional approval from or consent of the utility for overlashing other than the approval obtained for the host attachment.'") (citing Reconsideration Order at ¶ 75). This

holding accurately relies upon the Reconsideration Order insofar as the cited portion of the Reconsideration Order was specifically addressing third-party overlashing. *Salsgiver* never addressed whether or to what extent NPTC was allowed to require advance notice of overlashing; it only addressed whether a permitting requirement for third-party overlashing was reasonable.

Whether this is framed as a "consent" issue or otherwise, is beside the point (or at most a game of semantics) because two propositions of law are entirely clear with respect to overlashing: (1) that overlashing is subject to the same safety, reliability, engineering and capacity standards as any other burden on the pole line, and (2) that a utility can deny access for overlashing for the reasons set forth in § 224(f)(2). *See* Section I(A), *supra*; *see also Time Warner Cable of Kansas City*, 14 FCC Rcd 11599 at ¶ 26 ("[TWC] of Kansas City **SHALL NOT overlash its own lines**…to poles which have been identified as not meeting the requirements of the [NESC], or which have been determined would be in violation . . . upon overlashing. . . **until the necessary** pole change-out and/or **make-ready work for that pole is completed**.") (bolded and underlined emphasis added; capitalization in original). And yet, attaching entities regularly rely upon the *CTAG* and *Salsgiver* decisions as support for their positions that (1) overlashing is somehow different from an engineering perspective from a new attachment, and (2) a requirement of advanced notice of overlashing is unreasonable. In order to bring clarity to the Commission's position with respect to overlashing, the Electric Utilities request that the Commission clarify that its decisions in *Salsgiver* and *CTAG* (which were based on fact-specific records anyway), do **not** stand for the propositions that overlashing is exempt from engineering review or that pole owners are prohibited from requiring advance notice of overlashing. Alternatively, if *Salsgiver* and *CTAG* do stand for these preposterous propositions, the Electric Utilities respectfully request that the

Commission follow the lead of every state public utility commission to address this issue within the past 10 years, and reverse or disavow these portions of *Salsgiver* and *CTAG*.

II. THE STATE PUBLIC UTILITY COMMISSIONS THAT HAVE ADDRESSED OVERLASHING HAVE OVERWHELMINGLY RATIFIED OR ADOPTED ADVANCED NOTICE REQUIREMENTS.

As the FCC has observed:

> [S]tate experience with regulation of pole attachments provides an invaluable opportunity for the Commission to observe what works and what does not work to achieve policy goals. State efforts to date on establishing fair access rules—including timelines—have been particularly instructive as the Commission attempts to balance the needs of communications companies to deploy vital network facilities with the needs of utility pole owners, including the need to protect safety of life and the reliability of their own critically important networks.

Implementation of Section 224 of the Act; *A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, ¶ 7 (2011). The vast weight of state public utility commission authority requires or approves of advanced notice of overlashing. To our knowledge, every state public utility commission to address this issue in the last 10 years has ratified or adopted some sort of advance notice requirement, if not an outright permitting requirement.

A. Arkansas

In 2016, the Arkansas Public Service Commission adopted new pole attachment rules which provide that "Requests to a Pole Owner for a Pole Attachment or Overlashing permit shall be in writing." *See* Arkansas Public Service Commission Pole Attachment Rules, Rule 2.02(a).[4] Further, Rule 2.02(b) of the Arkansas Pole Attachment Rules provides, "An Attaching Entity wishing to overlash facilities shall submit a written request to the Pole Owner identifying the size

[4] *Available at:* http://www.apscservices.info/Rules/pole_attachment_rules.pdf.

and type of facilities to be overlashed, the size and type of facilities to be added, the poles over which such facilities will be overlashed, and when such facilities will be overlashed. . . .” And Rule 2.02(f) of the rules provides:

> **The Pole Owner shall approve, deny, or conditionally approve** with Make-Ready Work provisions, **the request for** a Pole Attachment or **Overlashing** in writing as soon as practicable, but in no event later than:
>
> (1) **45 days after receipt of a complete permit request**, for requests including no more than 300 poles or 20 manholes; or
>
> (2) 60 days after receipt of a complete permit request, for requests greater than the preceding limits but less than 3,000 poles and 100 manholes.

(emphasis added).

Attaching entities sought reconsideration of this rule, arguing that a “permit for fiber optic overlashing is unnecessary” but the Arkansas PSC rejected the request, holding:

> The Commission finds that the TelCos have raised no new issues which support a revision to Rule 2.01 on overlashing. **The evidence continues to support the need for a permit for overlashing because of safety and reliability concerns.**

In the Matter of a Rulemaking Proceeding to Consider Changes to the Arkansas Public Service Commission's Pole Attachment Rules, Docket No. 15-019-R; Order No. 7, 2016 Ark. PUC LEXIS 360, *10 (Oct. 12, 2016) (emphasis added).

B. Ohio

Also in 2016, the Public Utilities Commission of Ohio (“PUCO”) approved Dayton Power & Light’s pole attachment tariff (over objections from the state cable television association) which required “advanced permission” for overlashing. *In the Matter of the Application of Dayton Power and Light Company to Amend Its Pole Attachment Tariff,* 2016 Ohio PUC LEXIS 821, ¶¶ 79-83 (September 7, 2016). The PUCO stated:

> The Commission finds that DP&L’s voluntary proposed tariff language requiring advanced permission by DP&L for an attaching entity to overlash existing

> facilities is reasonable. . . . The Commission agrees with DP&L that **overlashing an existing facility increases the load on a pole and that it is necessary to determine whether a pole can safely accommodate the additional load before the facility is overlashed**.

Id. at ¶ 82. Similarly, the state cable television association filed objections to CenturyLink's pole attachment tariff, claiming that the tariff should specifically allow for overlashing "without a Company-approved application upon at least 15 days advanced written notice to the Company." *In the Matter of the Application of United Telephone Company of Ohio, Inc., DBA CenturyLink, to Introduce a Pole Attachment Conduit Occupancy Tariff*, 2016 Ohio PUC LEXIS 536, ¶ 15 (May 18, 2016).[5] The PUCO rejected the cable operators' argument, stating: "Further, the Commission recognizes that overlashing can affect the loading of a pole and that a 15-day notice requirement to allow for overlashing may not provide adequate time to evaluate whether a pole can accommodate the additional load." *Id.* at ¶ 19.

C. Washington

In 2015, the Washington Utilities and Transportation Commission ("WUTC") adopted a rule requiring that attachers provide 15 days' advance notice of overlashing, along with specific information in the advance notice of overlashing:

> The occupant must provide the owner with written notice fifteen business days prior to undertaking the overlashing. The notice must identify no more than one hundred affected poles and describe the additional communications wires or cables to be overlashed so that the owner can determine any impact of the overlashing on the poles or other occupants' attachments. The notice period does not begin until the owner receives a complete written notice that includes the following information:

[5] In the CenturyLink tariff case, the Ohio state cable association was actually advocating for a 15-day advance notice requirement. 2016 Ohio PUC LEXIS 821 at ¶ 79. This stands in stark contrast to the position taken here by the National Cable Telecommunications Association, which is advocating for a borderline reckless rule that "an attacher shall not be required to…provide advance notice to a pole owner before overlashing additional wires, cables, or equipment to its own facilities." NCTA Ex Parte Letter re Wireline Infrastructure, WC Docket No. 17-84, p. 2 (October 20, 2017).

(i) The size, weight per foot, and number of wires or cables to be overlashed; and

(ii) Maps of the proposed overlash route, including pole numbers if available.

See Washington Admin. Code § 480-54-030(11)(a). Under the WUTC's rule, the advance notice specifically allows the pole owner "to inspect the proposed route and provide a written response and explanation if the owner prohibits the noticed overlashing." *In the Matter of Adopting Chapter 480-54 WAC Relating to Attachment to Transmission Facilities*, 2015 Wash. UTC LEXIS 824, *15 (Oct. 21, 2015).

D. Louisiana

In 2014, the Louisiana Public Service Commission ("LPSC") adopted an order (1) requiring advance notice of overlashing, and (2) requiring a pole owner to notify the attaching entity within 15 days if the request is denied. *See* Louisiana Public Service Commission, General Order, Docket No. R-26968, 2014 La. PUC LEXIS 263, *37-38 (Rule 7(a) - (c)) (Sept. 4, 2014). The LPSC overlashing rule provides, in most pertinent part:

a. Any Attacher wishing to overlash facilities must provide a Pole Owner with reasonable notice of its intent to overlash facilities by filing a written request with the Pole Owner identifying what existing and proposed facilities are to be attached and/or overlashed, all entities served by the overlash, all design information to perform pole loading analysis, where such facilities will be attached and/or overlashed, and when such facilities will be attached and/or overlashed. . . .

b. A Pole Owner shall conduct any pre-construction inspection reasonably necessary within a reasonable time of receipt of the Attacher's written request to overlash and provide the Attacher with a written estimate of the Make-Ready Costs, if any, associated with the overlash.

c. Where a Pole Owner does not wish to permit the attachment or overlashing of facilities because it has determined that a requested overlash cannot be performed in compliance with applicable engineering, construction and safety standards, the Pole Owner must identify, in writing, the reasons for the denial within 15 days of receipt of the Attacher's written request. . . .

Id.

E. Iowa

In 2013, the Iowa Utilities Board ("IUB") adopted a requirement that attachers provide pole owners notice prior to overlashing:

> Pole occupants shall provide notice to pole owners of proposed overlashing at least 7 days prior to installation of the overlashing, unless the pole occupant and pole owner have negotiated a different notification requirement.

Iowa Admin. Code r.199-25.4(2)(c)(3). The IUB reasoned in part that:

> **Overlashing of existing lines by a communications company may create situations that the pole owner will need to address prior to the overlashing being installed**. The Board recognizes that many instances of overlashing will not require any action by the pole owner; however, in some instances the size of the overlashing may raise safety concerns.
>
> . . .
>
> **The adopted provision that will require prior notice and an opportunity for the pole owner to determine if the overlashing raises safety concerns is consistent with the position taken by the FCC**.

In Re: Pole Attachments Rule Making [199 IAC Chapter 27] and Amendment to 199 IAC 15.5(2), Docket No. RMU-2012-0002, 2013 Iowa PUC LEXIS 515, *19-20 (Iowa Utilities Bd. Dec. 2, 2013) (citing Telecom Order at ¶ 64) (emphasis added).

F. Utah

In 2012, the Utah Public Service Commission approved a safe harbor pole attachment agreement, which provides as follows with respect to overlashing:

> With the exception of construction on existing slack spans or on existing messengers attached to Poles carrying voltages at or above 34.5 kV, Licensee may overlash a single ninety-six (96) or fewer count fiber cable, or coaxial cable of equivalent diameter(s) and weight(s) without submitting an application. For these specific instances of overlashing, Licensee will provide Pole Owner with maps of the proposed overlash route and Pole numbers, **ten (10) days prior to such overlashing**. Licensee agrees to correct any of Licensee's existing noncompliant facilities at the time of the overlashing such that the

> facilities are made to comply with the NESC. Any other overlashing requires Licensee to submit an application to Pole Owner and receive approval prior to installation.

Safe Harbor Pole Attachment Agreement of PACIFICORP d/b/a Rocky Mountain Power (emphasis added),[6] approved in *In the Matter of the Consolidated Applications of Rocky Mountain Power for Approval of Standard Reciprocal and Non-Reciprocal Pole Attachment Agreements*, Docket No. 10-035-97, Report and Order, p. 4 (Utah PSC, Nov. 21, 2012).[7]

G. Connecticut

In 2008, the Connecticut Department of Public Utility Control ("DPUC") articulated its policy that advance notice of overlashing is reasonable. The DPUC stated, in pertinent part:

> The Department shares [Connecticut Light & Power's] concern regarding pole loading and a pole owner's need to control pole configurations. Maintaining an accurate assessment of pole loading is essential to protect the safety of the public….
>
> Some intervenors, most notably NECTA [the cable association], believe that an entity should not be required to provide advance notice to a pole owner of overlashing. The Department is disappointed that, given all the effort on the part of participants in the Pole Make Ready Proceeding, some participants are apparently still unwilling to work together to resolve pole attachment-related issues, even by providing simple notice of their activities on pole attachments. **Providing advanced notice is certainly not an unreasonable or burdensome requirement, and the Department believes such notice is necessary to preserve CL&P's ability to manage the physical integrity of the pole infrastructure**. An advance notice requirement prior to overlashing of an entity's own facilities is appropriate. The Company should also treat any instance of overlashing that does not comply with the notice/permission requirement (as appropriate) of the revised pole attachment agreements as an Unauthorized Attachment . . . .

Application of the Connecticut Light & Power Company to Amend Its Rate Schedules, Decision, 2010 Conn. PUC LEXIS 65, *331 (June 30, 2010).

[6] Available at: https://pscdocs.utah.gov/electric/10docs/1003597/239851RevPoleAttachAgrmnt12-3-2012.pdf.

[7] Available at: https://pscdocs.utah.gov/electric/10docs/1003597/2390361003597ro.pdf.

III. ELECTRIC UTILITIES SHOULD BE ABLE TO REQUIRE ADVANCED NOTICE OF OVERLASHING SO THAT THEY HAVE AN OPPORTUNITY TO DETERMINE WHETHER THE OVERLASHING CAN BE PERFORMED WITHOUT MAKE-READY.

As discussed *supra*, electric utilities have the right to deny overlashing for reasons of insufficient capacity, safety, reliability, and generally applicable engineering purposes. Far more frequently, electric utilities prefer to resolve any capacity, safety, reliability or engineering issues through make-ready in order to accommodate the proposed overlashing. But the only way that electric utilities can exercise these rights is through advance notice of overlashing. Advance notice of overlashing allows an electric utility to determine: (1) whether the proposed overlashing would overload the pole or create a clearance violation; and (2) whether there are existing clearance or loading violations that require correction prior to overlashing.

A. Advanced Notice of Overlashing is Necessary in Order to Determine Whether the Proposed Overlash Would Overload the Pole or Create a Clearance Violation.

Overlashing an existing bundle—even if the existing bundle is compliant—can overload a pole line and/or create a clearance violation. The means by which electric utilities evaluate the loading impact of a proposed overlash is through a pole loading analysis. A pole loading analysis is a structural analysis that ascertains the then-existing structural characteristics of the pole line and evaluates the structural impact of the proposed modification to the pole line. Among other things, a pole loading analysis reveals whether the existing pole line has sufficient strength to accommodate the proposed new load (whether the new load is a new attachment, an increased bundle through overlashing, stand-mounted equipment, or something else). The loading analysis has numerous components which measure the incremental effect of the new load from a vertical loading perspective and a transverse loading perspective. The analysis accounts for the characteristics of the existing pole (height, class, age and composition) and pole line, as well as

the weight, wind and ice load for the existing attachments, plus the proposed new load. On any given pole, an additional overlashed cable might overload the pole due to (1) the weight of the new load or (2) the increased profile (wind load) of the new bundle. In some rare cases (such as where an overlash offsets an existing imbalanced load), the overlashing might actually decrease the loading on the pole line. But it is difficult—sometimes impossible—to make this determination without performing a pole loading analysis.

Some commenters in this docket have asserted that engineering studies should not be required prior to overlashing because of the small incremental load placed on a pole by an overlash. *See, e.g.*, Comments of Charter Communications, Inc., WC Docket No. 17-84, p. 36 (June 15, 2017); Comments of NCTA – The Internet and Television Association, WC Docket No. 17-84, p. 5-6 (June 15, 2017). While this might be true for some overlashing, it is certainly not a rule of general applicability. For example, a 29-year-old 40-foot class 5 pole with three phases, a transformer and two tensioned communications messengers has a much different loading profile than a brand new 40-foot Class 3 pole with a single phase, no transformer, one tensioned communications messenger and a communications service drop. Further, where there are two poles of identical age, height, and class with the exact same facilities attached, one pole could pass a pole loading analysis while the other failed, if one of the poles was being built to NESC Grade B standard and one to NESC Grade C standard, or if they were located in different wind or ice loading zones. Though it is true, as ACA indicated in its initial comments in this docket, that certain poles can be excluded from the need for a pole loading analysis based on a visual inspection by knowledgeable personnel, this should be an exception in the process, rather than a rule. *See* Comments of the American Cable Association on the Notices of Proposed Rulemaking, WC Docket No. 17-84, WT Docket No. 17-79, p. 40 (June 15, 2017).

Further, while overlashing a single fiber to an existing cable might not add significant additional load to the pole, cables are often overlashed multiple times—resulting in a load of cumulative significance. Importantly, when a new attachment is permitted (and assuming it was properly permitted in the first place, which is not always the case), the attachment is engineered **only** for the messenger strand and whatever coaxial cable or fiber is included within the initial permit application. The engineering does **not** account for potential additional fiber or coax lashed to the same messenger strand. Moreover, there may have been significant changes to the pole line since the time of the original permitting (new attachments, additional electric facilities, etc.).

B. Advance Notice of Overlashing Is Necessary in Order to Determine Whether There Is an Existing Violation that Must Be Corrected Prior to Overlashing.

Advanced notice of overlashing is necessary to ensure that the proposed overlashing will not result in overlashing into an existing violation. Overlashing into an existing violation is a dangerous practice for at least three reasons: (1) it can endanger the safety of the communications worker performing the overlashing (for example, causing the communications worker to enter into the power space); (2) it can endanger the safety of the public by compounding existing violations (for example, low hanging wires over a roadway); and (3) it can threaten the reliability of the electric infrastructure by compounding an existing problem. No stakeholder would argue that a new attachment should be permitted before correction of an existing overload or existing violation involving clearance to power or ground; there is no reason why overlashing should be treated any differently.

The Commission has previously rejected arguments by overlashers that they should be able to attach without notice and that any existing violations can be fixed after the overlashing is complete. *See e.g. KCPL v. Time Warner,* 14 FCC Rcd 11599 at ¶ 26 ("[TWC] of Kansas City

SHALL NOT overlash its own lines…to poles which have been identified as not meeting the requirements of the [NESC], or which have been determined would be in violation [of the NESC] upon overlashing…**until the necessary** pole change-out and/or **make-ready work for that pole is completed**.") (bold and underlined emphasis added). This precedent is prudent given the experience of the Electric Utilities.

Oncor Electric Delivery in Texas currently requires 30 days' advance notice of overlashing. This policy arose out of a number of negative experiences with licensees or their contractors performing overlashing work without prior notice and in an unsafe manner. For example, in 2008, prior to Oncor's implementation of its advance notice of overlashing requirement, Oncor discovered a licensee's third-party contractor overlashing a communications cable despite the fact that there was an existing clearance violation between the electric conductors and the messenger strand being overlashed, with transformer leads running through the communications space. Overlashing into this existing violation led to the communications contractor working within **inches** of live electric leads. (See Exhibit A hereto for photograph of same). The possibility of overlashing into an existing clearance violation between power and communications isn't remote, either. In 2016, Oncor received advance notice of overlashing on 5,186 poles; 716 of these poles (13.8%) had existing clearance violations between communications attachments and power facilities.

Overlashing into existing violations not only presents a danger to communications workers, it also presents a danger to the public. For example, in 2017, a truck clipped a low-hanging communications wire attached to two Ameren Missouri poles on either side of a St. Louis roadway. Upon investigation, Ameren discovered that the wire clipped by the truck violated the NESC requirements for clearance above roadway. (*See* Exhibit B hereto). The existing clearance

violation was compounded because the attacher, without notice to Ameren Missouri, had overlashed into the violation. If Ameren Missouri had received advance notice of the overlashing, it would have performed an inspection, discovered the existing violation, required the attacher to move its existing attachment up the pole so that the cable complied with the NESC's clearance requirement (including with the addition of the overlashed fiber), and then allowed the company to proceed with overlashing without further threat to public safety.

C. It Would Be Anti-Competitive and Contrary to Structural Science to Draw a Distinction between a New Attachment and an Overlash.

The Commission should reject any invitations to draw an engineering distinction based on the *purpose* of the new load. Structural science does not make a distinction between a new attachment, an overlash to an existing attachment, or something else—it is simply a new load. The Commission's existing precedent, stating that overlashing is subject to the same safety, reliability and engineering standards as any other burden on the pole, is in accord with scientific reality:

> [W]e continue to believe that an attachment's "burden on the pole" relates to an assessment of need for make-ready changes to the pole structure, including pole change-out, to meet the strength requirements of the NESC. For example, if the addition of overlashed wires to an existing attachment causes an excessive weight to be added to the pole requiring additional support or causes the cable sag to increase to a point below safety standards, then the attacher must pay the make-ready charges to increase the height or strength of the pole.

Reconsideration Order at ¶ 77.

Aside from the structural science, from a competitive neutrality perspective it does not make sense to draw a distinction between an overlash and a new attachment. In fact, treating overlashing more favorably than a new attachment—especially when there isn't a compelling engineering reason for doing so—is anti-competitive to new entrants. If a new entrant, like Google Fiber, sought to provide high-speed broadband to an area through aerial deployment, it would need to construct a new messenger strand and work through the permitting process for new

attachments. By way of contrast, the incumbent attacher (such as a cable television company) would be able to accomplish the same goal with greater speed (not to mention less expense) if the Commission treats overlashing any differently than a new attachment. Favoring incumbents over new entrants is a policy decision presumably within the Commission's discretion. But even if the Commission chooses to favor incumbents as a matter of policy, the Commission should still allow for advance notice and a reasonable opportunity to perform any necessary engineering review of the new "burden on the pole."

IV. THE COMMISSION SHOULD CODIFY A NOTICE AND ATTACH PROCESS FOR OVERLASHING, BUT SHOULD CLARIFY THAT *ADVANCE* NOTICE WITH AN OPPORTUNITY FOR ENGINEERING REVIEW OF THE PROPOSED OVERLASH IS REASONABLE.

The Commission's specific inquiries with respect to overlashing are as follows:

> We seek comment on codifying our longstanding precedent regarding overlashing. Specifically, we seek comment on codifying a rule that overlashing is subject to a notice-and-attach process and that any concerns with overlashing should be satisfied by compliance with generally accepted engineering practices. . . .Would codifying such a rule make clear the rights of overlashers? Would doing so reduce any confusion that may delay attachers from deploying next-generation services to unserved communities? Would codifying such a rule be consistent with our long-held view that overlashing has substantial competitive effects, ultimately leading to greater deployment and lower prices for consumers?

(FNPRM, ¶ 10).

A. The Commission Should Codify a "Notice-and-Attach" Process, but Should Clarify that the Notice at Issue Is *Advance* Notice.

The Electric Utilities generally support the Commission's proposed codification of a rule that overlashing is subject to a "notice-and-attach process." (FNPRM, ¶ 10). However, the details of such a "notice-and-attach process" and the actual meaning of the Commission's "longstanding precedent regarding overlashing" require clarification. Though the mere organization of the phrase "notice-and-attach" would indicate that the "notice" precedes the "attachment," the experience of the Electric Utilities also indicates that certain attaching entities (again, mostly cable operators)

would argue otherwise. For this reason, the Commission should make it abundantly clear that the "notice" it is codifying is advance notice.

The Commission should also clarify its "longstanding precedent regarding overlashing." Certain attaching entities (mostly cable operators) argue in pole license agreement negotiations that the Commission's precedent not only exempts them from filing applications for proposed overlashing, but also exempts them from providing any advance notice of overlashing at all. Though this position is, quite obviously, irreconcilable with the Commission's precedent that overlashing is subject to § 224(f)(2), it is nonetheless a position the Electric Utilities routinely face in pole license agreement negotiations. The Commission should make clear that, to the extent any of its "longstanding precedent regarding overlashing" stands for the proposition that advance notice of overlashing is an unreasonable requirement, that such precedent is expressly reversed and disavowed.

Thus, merely "codifying a rule" regarding a "notice-and-attach process" would neither "make clear the rights of overlashers" (FNPRM, ¶ 10), nor the rights of pole owners. The Commission should adopt a rule specifically stating that the "notice" pole owners may require is "advance" notice. Only with advance notice can pole owners exercise their rights under § 224(f)(2) to address insufficient capacity, safety, reliability and generally applicable engineering concerns.

B. For Competitive Neutrality Purposes, Overlashing Should Be Subject to the Same Notice Requirements as New Attachments.

The Commission inquires, "Would codifying such a [notice-and-attach] rule be consistent with our long-held view that overlashing has substantial competitive effects, ultimately leading to greater deployment and lower prices for consumers?" (FNPRM, ¶ 10). The question of whether overlashing has competitive effects is inextricably linked to the relative speed with which overlashers and new entrants can deploy their respective facilities. Any process that favors an

incumbent overlasher over a new entrant gives a measurable competitive advantage to the incumbent. It definitely has a "competitive effect"—but an *anti*-competitive effect.

Treating a new overlash request the same as a new attachment request—i.e. requiring 45 days' advance notice—ensures that incumbents and new entrants into the market compete on equal footing (although, in fairness, the incumbent will still be at a decided advantage given that overlashing generally requires less make-ready than new attachments). The Arkansas PSC saw fit to do just that, adopting rules requiring that attachers submit a pole license application 45 days in advance whether they propose to make a new attachment or overlash an existing cable. Rule 2.02(b) of the Arkansas Pole Attachment Rules; *see also* McLeodUSA Telecommunications Services, Inc.; Petition for Arbitration of Interconnection Rates Terms and Conditions and Related Arrangements with Illinois Bell Telephone Company (Ameritech Illinois) pursuant to Section 252(b) of the Telecommunications Act of 1996, Docket No. 01-0623, 2002 Ill. PUC LEXIS 4, *80 (Ill. Commerce Comm'n Jan. 16, 2002) ("Because public safety, as well as the integrity of the other attachments on the pole, are at stake, it is essential that a make ready survey and any necessary make ready work be performed before a facility is overlashed. We agree with Ameritech that potential problems should be identified and prevented before they occur, rather than after. In order to identify and prevent any potential problems, **the agreement should require that overlashed facilities be subject to the same make ready survey and make ready work requirements as McLeod's non-overlashed facilities**.")(emphasis added).

However, if the Commission is not concerned with the anti-competitive effects of favoring incumbent overlashers over new entrants, the Commission should at least follow the example of many states (as discussed *supra* in part II) and the American Cable Association's own recommendation, and allow pole owners to require 15 days' advance notice of overlashing. *See*

Reply Comments of the American Cable Association on the Notices of Proposed Rulemaking, WC Docket No. 17-84, WT Docket No. 17-79, p. 8 (July 17, 2017) ("ACA notes that utilities either permit or are required to permit attachers to provide 15-days' (or similarly brief) advance notice of planned overlashes and recommends the Commission confirm the right to overlash without an application and codify the 15-day timeframe to prevent utilities from unreasonably delaying or denying overlashes on existing attachments")*; Ex Parte* Filing of the American Cable Association on Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84, p. 3 (Sept. 14, 2017).

C. Concerns With Overlashing Can Be Satisfied Through Compliance with Standards for Capacity, Safety, Reliability and Generally Applicable Engineering Purposes.

Regarding the Commission's inquiry as to whether "any concerns with overlashing should be satisfied by compliance with generally accepted engineering practices" (FNPRM, ¶ 10), the Electric Utilities believe that proposition to be true, though incomplete. Any concerns with overlashing can be satisfied by compliance with generally accepted engineering practices, *as well as* consideration of safety, reliability, and capacity, as discussed *supra*. For that reason, the Electric Utilities propose that the Commission codify its long-standing precedent that 47 U.S.C. § 224(f)(2) applies to overlashing in the same way it applies to any other "burden on the pole." *See* Reconsideration Order, 16 FCC Rcd. 12103, ¶ 77 (May 25, 2001); *see also Time Warner Cable of Kansas City*, 14 FCC Rcd. 11599 at ¶ 26.

D. Proposed Rules.

If the Commission is inclined to adopt an actual rule regarding overlashing, as opposed to merely clarifying its policies in an order, the Electric Utilities respectfully propose the following new rules:

Proposed 47 C.F.R. § 1.1402(o):

> The term *overlashing* means the tying, draping, twisting, lashing, wrapping or otherwise affixing of fiber optic cable, coaxial cable or other wires over or around existing messenger strand or other cables or wires already attached to a pole.

Proposed 47 C.F.R. § 1.1403(f):

> A utility may require advance notice of overlashing. An advance notice requirement consistent with § 1.1403(b) shall be presumptively reasonable. Within such time period, a utility may deny overlashing where there is insufficient capacity, or for reasons of safety, reliability and generally applicable engineering purposes. If the overlashing is not denied, a utility shall provide a telecommunications carrier or cable operator an estimate of charges to perform any make-ready work necessary to accommodate the overlashing, as provided in § 1.1420(d).

CONCLUSION

The Electric Utilities value the opportunity to comment on these critical issues and commend the Commission for its interest in adopting a rule that would clarify the respective rights of pole owners and attachers with respect to overlashing. The Electric Utilities respectfully request that the Commission clarify that pole owners may require advance notice of overlashing in order to determine whether make-ready is required to accommodate the proposed overlashing.

The Electric Utilities look forward to engaging further with the Commission on these important issues.

Respectfully submitted this 17th day of January, 2018.

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EXHIBITS

Exhibit A


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Exhibit B


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